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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,821	07/01/2003	Steven Tsengas	1024	3013

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EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/611,821

Applicant(s)

TSENGAS, STEVEN

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 15-28 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-7 and 15-28 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-7, 15, 17-21 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,339,771 to Axelrod.

Regarding Claim 1, Axelrod teaches a pet mastication article with a micro-porous body; and enriching agent impregnated into the body (Col. 2 line 40-54).

Regarding Claim 15, Axelrod inherently has a plurality of porous with diameters between 3 and 10 microns since the pore size depends on the size of the impregnating agent and air introduced into the system during manufacturing. Axelrod teaches that the article is made from plastic the same material utilized by applicant.

Regarding Claims 3 and 17, Axelrod teaches the body comprises a synthetic bone manufactured from a material selected from the group of plastic and rubber (Col. 2 line 11).

Regarding Claims 4 and 18, Axelrod teaches the enriching agent is a dietary vitamin (Col. 1 line 53).

Regarding Claims 5 and 19, Axelrod teaches the enriching agent is a dietary mineral (Col. 1 line 53).

Regarding Claims 6 and 20, Axelrod teaches the enriching agent is an anti-microbial agent for combating microbial agents that cause illness and disease (Col. 1 line 37).

Regarding Claims 7 and 21, Axelrod teaches the enriching agent is a flavor enhancer (Col. 1 line 25).

Claims 1-7 and 15-21 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,178,922 to Denesuk et al.

Regarding Claim 1, Denesuk teaches a pet mastication article with a micro-porous body (Figs. 1, 2, 4); and enriching agent impregnated into the body (abstract).

Regarding Claim 15, Denesuk inherently teaches that a plurality of pores have a diameter between 3 and 10 microns. Denesuk teaches the same material taught by applicant (Denesuk Col. 4 line 27-30). Denesuk teaches a nylon or polyurethane with animal meal or meat broth etc within the material. When it is in the material it inherently will be filling pores of varying sizes. The examiner maintains that it is inherent that at least 2 or 3 or more of the porous fall within in the prescribed diameter range of 3 to 10 microns.

Regarding Claims 2 and 16, Denesuk teaches the body comprises a raw bone (Fig. 1 and Col. 4 line 58).

Regarding Claims 3 and 17, Denesuk teaches the body comprises a synthetic bone manufactured from a material selected from the group of plastic and rubber (Col. 4 line 3 and 26).

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Regarding Claims 4 and 18, Denesuk teaches the enriching agent is a dietary vitamin (Col. 4 line 27-28).

Regarding Claims 5 and 19, Densuk teaches the enriching agent is a dietary mineral (Col. 3 line 66 and Col. 4 line 25-31).

Regarding Claims 6 and 20, Axelrod teaches the enriching agent is an anti-microbial agent for combating microbial agents that cause illness and disease (Col. 1 line 19 and 52).

Regarding Claims 7 and 21, Denesuk teaches the enriching agent is a flavor enhancer (Col. 4 line 25-31).

Claims 1, 3, 7, 15, 22, 24, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,771,733 to Axelrod.

Regarding Claim 1, Axelrod teaches a pet mastication article with a micro-porous body; and enriching agent impregnated into the body (abstract).

Regarding Claims 15 and 22, Axelrod inherently teach that the microporous structure has a plurality of pores with a diameter between 3-10 microns since Axelrod teach that an aqueous based substance is absorbed by the article. Thus the article will inherently have at least 2 or more pores of the 3-10 micron range. Pores of varying sizes are inherently introduced into the article during manufacturing or even impurities in the raw material. Axelrod also teaches that many different methods can be used to form the article (Axelrod Col. 3 line 44). Since the claimed method of manufacturing does not result in any physical change in appearance, that it results in the same

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structure, the examiner is not giving patentable weight to the known manufacturing method of vacuum impregnation. This is merely an alternate process and Axelrod teaches that one of ordinary skill in the art can use any known process of manufacturing.

Regarding Claims 3 and 24, Axelrod teaches the body comprises a synthetic bone manufactured from a material selected from the group of plastic and rubber (abstract).

Regarding Claims 7 and 28, Axelrod teaches the enriching agent is a flavor enhancer (abstract).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,771,733 to Axelrod in view U.S. Patent No. 6,178,922 to Denesuk et al.

Regarding Claims 2 and 15, Axelrod does not explicitly teach the body comprises a raw bone (Fig. 1). However, Denesuk teaches it is old and notoriously well-known to apply enriching agents to either plastic or raw matter (Denesuk Fig. 1, 2 and 4). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely the impregnation of an alternate equivalent known mastication material as a manufacturing design choice

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based on availability of raw materials and efficient manufacturing practices. (Any table scraps feed to an animal inherently will be impregnated with enriching agents depending how the food was cooked or seasoned and it is notoriously well-known that animals eat table scraps and out of garbage cans).

Claims 22-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,178,922 to Denesuk et al as applied to claims 1 and 15 above.

Regarding Claims 22-28. Denesuk is silent on the vacuum impregnation. However, examiner is not giving patentable weight to this limitation since it does not result in any different physical change to the article in appearance. The article has the same structure. Merely selecting known manufacturing processes is an obvious engineering design choice for one of ordinary skill in the art based on the availability of equipment, cost, type of raw materials and efficiency.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,339,771 to Axelrod in view of U.S. Patent No. 6,178,922 to Denesuk et al.

Regarding Claim 2, Axelrod does not explicitly teaches the body comprises a raw bone (Fig. 1). However, Denesuk teaches it is old and notoriously well-known to apply enriching agents to either plastic or raw matter (Denesuk Fig. 1, 2 and 4). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely the impregnation of an alternate equivalent known mastication material as a manufacturing design choice based on availability of

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raw materials and efficient manufacturing practices. (Any table scraps feed to an animal inherently will be impregnated with enriching agents depending how the food was cooked or seasoned and it is notoriously well-known that animals eat table scraps and out of garbage cans).

Claims 4-6 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,771,733 to Axelrod in view of U.S. Patent No. 5,339,771 to Axelrod.

Regarding Claims 4, 5, 6, 25, 26, and 27, Axelrod '733 is silent on the enriching agent is a dietary vitamin; a dietary mineral; and an anti-microbial agent for combating microbial agents that cause illness and disease. However, Axelrod '771 teaches that it is old and notoriously well-known to impregnate dog bones with vitamins, minerals, and anti-microbial agent (Axelrod '771 Col. 1 line 37 and 53). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely the application of additional known additives for the known health advantages.

Response to Arguments

Applicant's arguments filed 14 October 2004 have been fully considered but they are not persuasive.

Regarding U.S. Patent No. 5,339,771 to Axelrod, examiner maintains that since Axelrod teaches a polyurethane (i.e. plastic) material it inherently is micro-porous.

Applicant's specification, page 6 line 12-13, indicated that it is well-known that a plastic

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material of this nature is micro-porous. The old and notoriously well-known mastication additives taught by Axelrod inherently fill these pores (or in other words impregnate) during processing of the device. Applicant has merely stated that the article is micro-porous but has not present what percentage of the article is micro-porous. The article of Axelrod is inherently micro porous because it will have porous of varying sizes and shapes from air that enters the system during processing and from the agent particles. Axelrod Fig. 1 shows the polyurethane #11 and the agent #12 filling pores within the polyurethane, thus the polyurethane article is definitely porous impregnated with agent. Examiner maintains that there inherently is at least one or two porous that fall within the micron range of 3 to 10 since this is an inherent result during manufacturing. Axelrod teaches it is known to add enriching agents to a mastication device (Col. 1 line 53) for the enhanced benefit to the animal consuming it. Also, the example provided by Axelrod teaches chicken meal which inherently contains enriching vitamin and mineral agents. Therefore, examiner maintains that Axelrod does in fact teach each and every element and applicant has not distinguished over the teachings of the cited prior art.

.Regarding U.S. Patent No. 6,178,922 to Denesuk, examiner maintains the agent taught by Denesuk fills pores within the plastic article body, thus the article is inherently micro-porous. As stated in the above paragraph, applicant has not claimed what percentage of the article is micro-porous and the article of Denesuk will inherently have at least 2 or more pores falling within the range of 3-10 microns. Denesuk teaches the agent can be a broth or animal meal particles. These particles inherently would fall within the range of 3-10 microns. Furthermore, the examiner maintains that Denesuk

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teaches a raw hide bone i.e. a raw bone (Denesuk Fig. 1). Also, the act of adding raw bone as an additional impregnating agent is an obvious choice to one of ordinary skill in the art since it is merely the selection of if a known mastication material selected to enhance animal appeal to the product. The prior art teaches that it is old and notoriously well-known to provide flavoring agents to the mastication article to enhance animal appeal for the product and ground raw bone would merely be the selection of a known alternate animal attractant. However, the examiner maintains the position that the raw hide bone taught by Denesuk meets applicant's broad limitation of a raw bone.

Regarding U.S. Patent No. 4,771,733 to Axelrod, this patent teaches that the enriching agent is **absorbed** into the polyurethane so the polyurethane is inherently micro-porous. Examiner maintains that there is motivation to modify the teachings of '733 with the teachings of '771 for the added health benefits. Examiner would like to bring attention an additional patent by Axelrod, U.S. Patent No. 5,476,069 (Col. 2 line 40-41), which teaches the addition of vitamins and minerals is not a combination made in hindsight, but rather knowledge within the level of one of ordinary skill in the art. One of ordinary skill would be motivated to make the modification to provide a more healthy diet for the animal and to provide good sanitary conditions.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does

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not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti
Patent Examiner
Art Unit 3643

08 December 2004



Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600